

U.S. DEPARTMENT OF LABOR
Employment and Training Administration
Washington, D.C. 20210

REPORT ON STATE LEGISLATION

REPORT NO. 5
December 2014

ALASKA Rule 4479
 (CH 50)

ADOPTED June 4, 2014
EFFECTIVE June 27, 2014

Administration

Clarifies the definition of “interested party” to mean (among other things) an employing unit, if the determination or the appeal relates to a claimant’s separation from that employing unit, or the liability of the employing unit for contributions or reimbursements. (Previously, the definition did not include “or reimbursements”.)

Provides that the method of electronically registering with the Department is the preferred and primary method to be used by an employing unit for filing contribution reports.

Amends the introductory language of Regulation 8 AAC 85.020(d) to read: An employer shall use the Internet to submit a quarterly contribution report if the report lists 50 or more individuals in covered employment in any calendar quarter during the calendar year. If an agent reporting on behalf of an employer submits such report that agent shall use the Internet to submit the reports. (Previously, the language provided that an employer or the employer’s agent shall use the Internet to submit a quarterly contribution report if the report lists 100 or more individuals in covered employment in a calendar quarter, or \$1,000,000 or more in taxable wages in the current or preceding calendar year. If an agent reporting on behalf of multiple employers submits such reports, and the reports list a cumulative total of 100 or more individuals in covered employment in a calendar quarter, that agent shall use the Internet to submit the reports.)

Provides that an employer shall, upon request, make available for inspection by the Department all accounting, cash, payroll, and tax records of the employer, including personal tax records of a limited liability company member.

Provides that all covered wages paid by an employer to an employee during a calendar year must be reported on the quarterly contribution report and wage schedule, and any covered wages paid in excess of the tax base during one calendar year must be segregated from the total wages reported for contribution payment purposes each quarter. (Previously, the language provided that after wages up to and including the tax base have been paid in any calendar year by an employer to an employee and have been reported, any additional wages paid by the employer to his employee in the calendar year must be reported on the quarterly contribution report and wage schedule; however, the amount of any wages exceeding the tax base during one calendar year must be segregated from the total wages paid for contribution payment purposes.)

Provides that an employer subject to the Alaska Employment Security Act shall (1) file the regular quarterly contribution report even if contributions have not accrued with respect to a particular quarter, and (2) for that quarter, indicate on the report that wages were not paid during the quarter. (Previously, the language provided that an employer subject to the Alaska Employment Security Act shall file the regular quarterly contribution report and wage schedule even if contributions have not accrued with respect to a particular quarter. For that quarter, an employer must file a report indicating that wages were not paid during the quarter in employment as defined in the Act.).

Provides that the Department will only accept a surety bond from reimbursing employers under each of the following conditions:

- 1) the bond must remain enforceable and in effect for 3 years after any reimbursing employer ceases to be an employer or terminates its reimbursable status;
- 2) cancellation of the bond may not go into effect until 90 days after the Department receives notification from the surety company of its intention to cancel the surety bond; and
- 3) a cancellation does not affect any liability of the surety or the employer incurred or accrued on benefits paid during the effective period under 1).

(Previously, a bond was accepted from reimbursing employers (1) if the bond remained in effect until cancelled only by action of the surety, the principal, or the Department; and (2) an action was not allowed to be commenced upon the bond more than 3 years after its cancellation.)

Coverage

Provides language concerning the determination of an employing unit as an employer as follows: In determining whether service by an individual constitutes employment by a particular employing unit, the individual will be considered an employee of that employing unit if: (1) the employing unit is the direct beneficiary of services performed by one or more individuals receiving remuneration; (2) remunerated services performed by one or more individuals are within the usual course and places of the employing unit's business; or (3) the employing unit exercises or has the right to exercise direction and control over the day-to-day duties of one or more individuals performing services for which they receive remuneration.

Provides that, if an employing unit fails to report wages and pay contributions as required, the Department may terminate a voluntary election of coverage effective retroactive to the quarter that a report and full payment (previously, effective retroactive to the date that the report and payment) were last received by the Department from the employing unit.

Financing

Provides that, except as provided in Regulation 8 AAC 85.295(c), an employer is not eligible for a rate determination for a calendar year (but will get the penalty rate instead) if, on quarters before July 1 (previously September 1) of the preceding calendar year, (1) the employer is

delinquent \$100 or more in paying contributions, penalties, or interest due; or (2) the employer has not filed a required report.

Amends the language concerning the adjustment of quarterly decline quotients by:

- Providing that, among other things, the Director may adjust an employer's quarterly payroll if the employer reported wages for services excluded from the definition of "employment" under AS 23.20.526 and for which an election has not been approved under AS 23.20.325.
- Providing that, among other things, the employer's payroll may be adjusted as follows:
 - at the employer's option, annual bonuses and lump-sum wage payments may be deleted from the payroll or apportioned equally among the quarters in the calendar year in which the artificial peaks or declines occur (previously, equally among the calendar quarters in which the services were performed);
 - excluded employment reported by the employer and for which an election has not been approved under Section 23.20.325 of the Employment Security Act may be deleted from the payroll in the calendar quarter in which the payment was reported; and
 - decline in payroll caused by a change in an employer's accounting practices may (previously, will) be adjusted by adding wages that would have been reported in the quarter if an accounting change affecting the employers payroll had not occurred; a change in wages in other quarters must have an offsetting amount as a correction to another quarter.
- Providing that the term "annual bonus" means something that is given or paid once a year, and that is over or in addition to what is due or expected, unlike a commission or an incentive payment.

Nonmonetary Eligibility

Provides that a claimant is responsible for providing information on eligibility when moving to a new location.

Provides that work registration may be deferred for a claimant who is temporarily unemployed with a definite date to return to full-time work within 45 (previously 90) days after the date the claimant files the initial claim.

Provides that a claimant who is required to register for work must actively seek suitable work by making at least one valid work search during each week that the claimant files for unemployment insurance benefits.

Provides that the Alaska Employment Security Division may require a claimant to make more than one valid work search during a week that the claimant files for unemployment insurance

benefits based on the demand for workers in an occupation suitable for the claimant within the area in which the claimant is filing benefit claims. The Division will notify a claimant of the claimant's work search requirement for a given benefit week by using a method specified by the Director.

Provides that a work search is considered valid if: (1) the claimant contacts an employer regarding work; (2) the work is suitable to the claimant's skills and capabilities; and (3) the method of contact is appropriate based on how prospective employers in that occupation are usually contacted for work.

Provides that, using a method specified by the Director, a claimant who is required to seek work shall report any employer contact made during each week that the claimant files a claim for unemployment insurance benefits. The report must include for each employer contact the (1) date of the contact; (2) name of the employer contacted; and (3) telephone number, address, electronic mail address, or website used to make contact. (Previously, language provided that the Division may require a claimant to seek work by contacting prospective employers in person if (1) there is a demand for workers in an occupation suitable for the claimant within the area in which the claimant is filing benefit claims; (2) a substantial amount of the work in that occupation is normally obtained by contacting prospective employers in person; and (3) the claimant has been allowed a reasonable period of time, not exceeding 13 consecutive weeks of benefit claims, to obtain work in that occupation through an employment office or other job-hunting agency. A claimant directed to seek work shall report the employer contacts made during any week for which a work search has been required. The report of employer contacts must include (1) dates of contacts; (2) name and address of each employer contacted; and (3) results of the contacts.)

CALIFORNIA AB 1556 ENACTED and EFFECTIVE September 17, 2014
(CH 377)

Administration

Requires all standard information employee pamphlets concerning unemployment and disability insurance programs to be printed in English and the 7 other most commonly used languages among participants in each program. Requires the Employment Development Department to make pages on its Internet Web site that provide information regarding applying for, and receiving, unemployment insurance benefits available in the 7 languages, other than English, most commonly used by unemployment insurance applicants and claimants. (Previously, required the pamphlets to be printed in English and separately in Spanish, or both.)

Requires the Director of Employment Development to periodically review policies and practices used to determine eligibility for and the amount of benefits in the unemployment insurance program to identify those policies and practices that do all of the following: (1) result in delayed eligibility determinations or benefit payments; (2) increase workload for the department; or (3) provide little or no value in identifying or preventing fraud or abuse in the unemployment insurance program.

Requires the Director to report to the Legislature the results of the first review on or before July 1, 2015; the Director may submit subsequent reports thereafter. The report shall be submitted in compliance with Section 9795 of the Government Code.

Nonmonetary Eligibility

Provides that an unemployed individual who is meeting all of the eligibility requirements, including the requirements under Section 1253.9, and is certifying for continued unemployment compensation benefits shall not be scheduled for a determination of eligibility for a week in which the individual commenced or is participating in a training or education program and has notified the Department of the training or education program.

Provides that, if the Department determines that the commencement of, or the ongoing participation in, a training or education program conflicts with the eligibility requirements for unemployment compensation, the Department may schedule and conduct a determination of eligibility.

Provides that an individual shall, to maintain his or her eligibility to file continued claims during a continuous period of unemployment, submit a continued claim not more than 14 days from the end of the last week ending date showing on the continued claim, or not more than 14 days from the date the Department issued that continued claim, whichever is later, unless the Department finds good cause for the individual's delay in submitting the continued claim. An unemployed individual may not be disqualified for unemployment compensation benefits solely on the basis that the continued claim was submitted 15 to 21 days, inclusive, from the end of the last week ending date showing on the continued claim, or 15 to 21 days inclusive, from the date the Department issued that continued claim, whichever is later.

CALIFORNIA

AB 1792
(CH 889)

ENACTED September 30, 2014
EFFECTIVE January 1, 2015

Administration

Provides that the Employment Development Department Director shall permit the use of any information in his or her possession to the extent necessary for any of the following purposes, and may require reimbursement for all direct costs incurred in providing any and all information specified:

- Until January 1, 2020, to enable the Department of Finance to prepare and submit the report required by Section 13084 of the Government Code that identifies all employers in California that employ 50 or more employees who receive benefits from the Medi-Cal program (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code). The information used for this purpose shall be limited to information obtained pursuant to Section 11026.5 of the Welfare and Institutions Code, and from the administration of personal income tax wage withholding pursuant to Division 6 (commencing with Section 13000) and the disability insurance program, and

may be disclosed to the Department of Finance only for the purpose of preparing and submitting the report and only to the extent not prohibited by federal law.

- To provide, to the extent permitted by federal law and regulations, the Student Aid Commission with wage information to verify the employment status of an individual applying for a Cal Grant C award pursuant to subdivision (c) of Section 69439 of the Education Code.
- To enable the Department of Corrections and Rehabilitation to obtain quarterly wage data of former inmates who have been incarcerated within the prison system to assess the impact of rehabilitation services or the lack of these services on the employment and earnings of these former inmates. Quarterly data for a former inmate's employment status and wage history shall be provided for a period of one year, three years, and five years following release. The data shall only be used for the purpose of tracking outcomes for former inmates in order to assess the effectiveness of rehabilitation strategies on the wages and employment histories of those formerly incarcerated. The information shall be provided to the Department to the extent not prohibited by federal law.

CALIFORNIA

SB 1314
(CH 399)

ENACTED September 17, 2014
EFFECTIVE January 1, 2015

Appeals

Provides that an appeal may be filed with an administrative law judge within 30 (previously 20) days after mailing or personal service of the notice of the ruling or reconsidered ruling. The 30-day (previously, 20-day) period may be extended for good cause. The Employment Development Department may for good cause reconsider a ruling or reconsidered ruling within either 5 days after the date an appeal is filed or, if an appeal is not filed, within 30 (previously 20) days after mailing or personal service of notice of the ruling or reconsidered ruling.

Provides that a further appeal may be filed to the appeals board within 30 (previously 20) days after mailing or personal service of the notice of the ruling or reconsidered ruling. The 30-day (previously, 20-day) period may be extended for good cause.

Provides that the previous language concerning the number of days for filing appeals shall become inoperative on July 1, 2015, and, as of January 1, 2016, is repealed; the new language shall become operative on July 1, 2015.

NEW JERSEY

RULE 20629

ADOPTED November 18, 2014
EFFECTIVE December 15, 2014

Financing

Provides that, for claims effective on or after January 1, 2015, the taxable wage base is increased from \$31,500 to \$32,000, for calendar year 2015.

Monetary Entitlement

Provides that, for claims effective on or after January 1, 2015, a claimant must have earned at least \$165 per week for 20 weeks in a base period to be considered monetarily eligible. The minimum weekly base period wage was increased from \$145 per week to the \$165 per week figure mentioned above.

Provides that, for claims effective on or after January 1, 2015, where a claimant does not meet the weekly base period wage requirement, the claimant must have at least \$8,300 in wages during the established base period. The minimum base period wage was increased from \$7,300 to the \$8,300 figure mentioned above.

Provides that, for claims effective on or after January 1, 2015, the maximum weekly benefit amount is increased from \$636 per week to \$646 per week.

Temporary Disability Insurance

Provides that, for claims effective on or after January 1, 2015, the maximum weekly benefit amount for temporary disability insurance is increased from \$595 per week to \$604 per week.

VIRGINIA HB 389
(CH 201)

ENACTED March 7, 2014
EFFECTIVE July 1, 2014

Nonmonetary Eligibility

Adds a rebuttable presumption of voluntary quit from employment that begins during the summer semester breaks for graduate students.

WISCONSIN Rule 22043

ADOPTED July 7, 2014
EFFECTIVE August 1, 2014

Administration

Provides that, with regard to a business transfer, the Department of Workforce Development (DWD) shall accept, from a transferee electing to become a successor, a late written application for successorship received no more than 90 days after its due date if the transferee satisfies the Department that the application was late as a result of excusable neglect.

Appeals

Creates a standard affidavit form that may be used by both claimants and employers during unemployment insurance appeals. Prescribes the rules with respect to use of the standard affidavit form. Affidavit forms are available at the Department's Web site or by requesting a copy from the hearing office. An affidavit based upon information and belief must state the source of the information and the grounds for the belief. A party may submit an affidavit as a potential exhibit by simultaneously delivering the affidavit to the hearing office and a copy to the

other party at least 3 days prior to the hearing. At the hearing, the administrative law judge may accept the affidavit as evidence.

Financing

Repeals regulation (DWD) 111.07, regarding delinquent contribution reports and delinquent quarterly wage reports including: a \$15 tardy filing fee and interest charges imposed on an employer who is tardy in filing the contribution portion of the reporting package, tardy in filing a separate contribution report, or tardy in payment; a separate fee for tardy filing or failing to file a wage report by the appropriate method with the amount of the fee depending upon the number of employees on the wage report (fewer than 10 or more than 10 employees); fees ranging from \$15 with 1-100 employees in the quarter to \$115 with 401 or more employees in the quarter; and language concerning the waiver of tardy filing fees. (The provisions with respect to the amount and process of assessing a penalty against the employer who files a tardy quarterly wage report are now set forth in Section 108.22, Statutes, as a result of Act 36.)

Provides that (1) except as provided in Section DWD 113.02 or 113.03, the Department may grant a waiver or decrease the interest owed by an employer if the employer satisfies all of the following conditions:

(a) The employer pays the full payment of any taxes and assessments due within 30 days following resolution of all issues. Until the employer pays all of the correct amount of taxes and assessments due, the Department may not waive or decrease any of the interest owed by the employer.

(b) The employer files any wage or tax report due within 30 days following resolution of all issues. Until the employer files all of the wage or tax reports that are due, the Department may not waive or decrease any of the interest owed by the employer.

(c) The employer has no other outstanding reports, contributions, interest, penalty, or other fees due.

(d) The employer was determined within the last year to be subject to Wisconsin unemployment insurance law, or has a history of timely filing required reports, including wage and tax reports, and of making payments in a timely manner.

(e) The employer or a business for which the employer is a successor, pursuant to the requirements of Section 108.16 (8), Statutes, has never previously received a waiver or decrease in interest charged under Section 108.22 (1)(a) or 108.17 (2c) (c), Statutes.

(f) There has not been a hearing before an administrative law judge on an appeal under Section 108.10, Statutes, regarding the tax liability associated with the interest.

(2) If all of the conditions of Subsection (1) are satisfied, the Department may waive or decrease the interest charged under Section 108.22 (1)(a) or 108.17 (2c)(c), Statutes, if the interest charged resulted from any of the following circumstances:

(a) The employer failed to pay taxes or underpaid taxes by the required due date established by the Department as a result of excusable neglect. An erroneous contention regarding the unemployment insurance law or misunderstanding of the obligations under the law shall not constitute excusable neglect. Examples of excusable neglect are:

- Embezzlement by an accountant or an employee who is not related to the employer such that the embezzlement caused the interest to be due.

- Inaccurate written communication given to the employer by the Wisconsin Division of Unemployment Insurance that affirmatively misled the employer as to its duties and obligations such that the inaccurate written communication caused the interest to be due.

(b) An inadvertent mathematical miscalculation by the employer of the amount of tax due resulting in a de minimis underpayment of taxes.

(3) A denial of a request for a waiver or decrease of interest under Subsection (2) and Section 108.22 (1)(cm), Statutes, is not an appealable decision.

Provides that the above rules concerning the waiver or decrease of interest charged to employers due to delinquent payment of unemployment insurance taxes first apply to any delinquent contributions existing on or after August 1, 2014.

Provides rules for the process to deny or revoke a license based on delinquent unemployment insurance taxes, and provides procedures for persons whose license or credential is to be denied, not renewed, discontinued, suspended, or revoked based on being certified delinquent in paying unemployment insurance contributions. The Department must send to the delinquent license holder or applicant, a certified notice of liability that includes a statement that the Department may issue a certificate of delinquency to a licensing Department that may result in the license or credential being denied, not renewed, discontinued, suspended, or revoked. After receipt of a notice of liability of delinquent contributions, a license holder or applicant for a license shall submit full payment or enter into an approved installment payment plan schedule. A nondelinquency certificate shall be issued to any person who has paid the full amount, or has entered into and complied with an installment payment plan schedule, or is otherwise not liable for delinquent contributions. Other enforcement actions required or permitted by law are not prohibited in collecting contributions from the license holder or applicant.

Provides for a financial record matching program between financial institutions doing business in Wisconsin and the Department to participate in the exchange of data on a quarterly basis. After the financial institution has signed an agreement, the Department will sign the agreement after review if all conditions have been met. Any changes to the conditions of the agreement shall be submitted by the financial institution or the Department at least 60 days prior to the effective date of the change.

Provides that the rules concerning license revocation and financial record matching first apply to any delinquent contributions existing on or after August 1, 2014.

Nonmonetary Eligibility

Repeals regulation DWD 132.03 regarding voluntary termination of part-time employment including: part-time means work which is performed for 30 or less hours per week; a claimant's employment is qualifying part-time work if in at least 65 percent of the most recent 26 weeks of working with the part-time employer, the claimant worked only part-time, and the loss of the full-time work makes it economically unfeasible for the claimant to continue the part-time work; to determine whether the loss of the full-time work makes it economically unfeasible for the claimant to continue the part-time work, add the amount of the claimant's gross wages from the part-time work for the week preceding the week in which the claimant terminates the part-time work to the amount of unemployment benefits payable for that week and subtract from this sum the expenses incurred by the claimant in that week for the part-time work; if the remainder is less than the claimant's full weekly benefit rate for that week, consider it economically unfeasible for the claimant to continue the part-time work; if the claimant meets the part-time work requirements, and is otherwise eligible, the claimant shall be entitled to benefits; if a claimant does not meet the part-time work requirements, the claimant shall be subject to a reduction in the benefits payable, and shall be ineligible for benefits until reemployed, unless another exception applies.